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*Attorneys for Defendants C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products
Liability Litigation,

No. 2:15-MD-02641-DGC

**THE PARTIES' JOINT REPORT
RESPONDING TO THE COURT'S
JANUARY 6, 2020 ORDER
REGARDING SETTLEMENT
STATUS OF CASES**

1 In accordance with the Court's January 6, 2020 docket-entry Order [Doc. 21193],
2 and further extensions granted by the Court, the parties submit this joint memorandum
3 addressing the issues raised by the Court relating to the parties' January 2, 2020 Joint Report
4 of the Settlement Status of cases [Doc. 21167].

5 **Plaintiffs' Lead Counsel Prefatory Statement**

6 Plaintiffs' Lead Counsel recognize their court-appointed roles and duties, as does the
7 Plaintiffs' Leadership Committee and Plaintiffs' Executive Committee. This MDL
8 litigation has reached a stage where the majority of Plaintiff's counsel affected by the issues
9 addressed in this Joint Report have not been involved in any leadership roles, nor do
10 attorneys in leadership positions represent many of the individual Plaintiffs who would be
11 directly affected by the outcome of the issues and the parties' positions addressed in this
12 Supplemental Joint Report. The roles and responsibilities of Plaintiffs' Lead Counsel, the
13 PEC and PLC attorneys, who have all served in roles to manage this litigation, are clearly
14 defined in CMO No. 1. The issues and matters being addressed in this Supplemental Joint
15 Report do not relate to the generic and common benefit duties set forth in CMO No. 1, but
16 rather involve unique case specific issues and matters relating to individual Plaintiffs and
17 cases wherein the attorney-client relationship is tantamount. The issues set forth in this Joint
18 Report involve the exclusive rights and responsibilities of each affected Plaintiff and his/her
19 attorney of record.

20 **A. Amended Exhibit G – Direct-filed cases ready for transfer that have never**
21 **been served on Defendants**

22 Defendants assert that cases identified on the attached Amended Revised Exhibit G
23 were not served in compliance with CMO No. 4 [Doc. 363], which requires the plaintiff to
24 send "a request for waiver of service pursuant to the provisions of Fed. R. Civ. P. 4" to
25 counsel for Bard. Rule 4(m) provides that, by motion, the court may dismiss these cases if
26 they are not served within 90 days after the complaint is filed, and the plaintiff has failed to
27 show good cause for the delay. In its most recent analysis, counsel for Bard was unable to
28 locate any request for waiver of service, and, in the Joint Memorandum [Doc. 21167],

1 Plaintiffs have not provided any showing of good cause for the delay. As a result, Bard
2 believes that, pursuant to Fed. R. Civ P. 4(m), these cases could be immediately dismissed
3 without prejudice. Nonetheless, consistent with the Court's August 7, 2019 Order relating
4 to previous remand cases, Bard respectfully requests that the Court order that (1) Plaintiffs
5 identified on Amended Exhibit G have 20 days to serve the short form complaint and
6 request for waiver of service on Defendants' counsel; and (2) within five business days
7 thereafter, the parties file an updated Amended Exhibit G, indicating for each case whether
8 service has been completed by the deadline. Absent good cause, Bard respectfully requests
9 that the Court then dismiss the cases on Amended Exhibit G which have not been served
10 on the Defendants.

11 Plaintiffs' Lead Counsel are not in a position to agree or disagree with Defendants'
12 recommended action as relates to the issue of dismissals of cases in which other firms are
13 counsel of record for the plaintiff. This issue pertains to case specific matters and are the
14 sole responsibility of counsel of record in the related plaintiff's case.

15 Plaintiffs' Lead Counsel, and representatives for Plaintiffs' Lead Counsel, have
16 communicated via email seven times since this Court's Amended Order on January 7, 2020
17 - to all affected plaintiffs' counsel regarding this Joint Statement. Plaintiffs' Lead Counsel
18 have instructed all affected Plaintiffs' counsel to communicate directly with defense counsel
19 and/or the Court about Defendants' the Defendant-drafted Exhibits attached hereto,
20 generally, and specifically about any potentially affected case if they are in disagreement
21 with Defendants stated proposals.

22 Regarding Defendants' statement that Plaintiffs have not provided good cause for
23 delay, Plaintiffs' Lead Counsel cannot address individual cases or communications with
24 Bard to which we have neither been privy nor represent those individual plaintiffs.
25 Plaintiffs' Lead Counsel have been made aware of certain cases in which Bard seeks
26 dismissals. However, in many instances counsel of record for individual plaintiffs have
27 indicated service issues have been rectified and communicated same to Defendants. As of
28

1 the date of filing this supplemental report, Plaintiffs' Lead Counsel are not aware of further
2 discrepancies.

3 **B. Amended Exhibit H – Cases otherwise ripe for remand or transfer, except**
4 **for fact they have deficiencies in the Plaintiff Profile Form**

5 With regard to the cases identified on the attached Amended Exhibit H that have
6 Plaintiff Profile Form deficiencies, Defendants respectfully request that the Court enter an
7 order similar to past remand/transfer orders that (1) require those Plaintiffs to serve
8 substantially complete Profile Forms, including providing the place of filter implant within
9 14 days of the Court's Order; and (2) further provides that a failure to comply with the order
10 may result in dismissal of the case. *See, e.g.*, Doc. 20115. Defendants further respectfully
11 propose that within three business days thereafter, the parties file a joint status reporting
12 indicating whether a proper Plaintiff Profile Form has been provided by in each of those
13 cases. If any Plaintiffs fail to file a Profile Form or correct any deficiency by that date, the
14 Defendants believe that Plaintiff's case should be dismissed. The Defendants will remove
15 any Plaintiff who serves a substantially complete profile form.

16 Plaintiffs' Lead Counsel are not in a position to agree or disagree with Defendants
17 recommended action as relates to the issue of dismissals of cases in which other firms are
18 counsel of record for the plaintiff. This issue pertains to case specific matters and are the
19 sole responsibility of counsel of record in the related plaintiff's case.

20 **C. Amended Exhibit L– Cases in which Plaintiffs did not identify a venue in the**
21 **complaint**

22 For cases where Plaintiffs have not identified a venue in the Complaint, Bard
23 proposes that those cases be transferred to the district where the filters were implanted based
24 on the information provided in the Plaintiff Profile Forms. Based on a review of the Profile
25 Forms and the location of implant, Bard proposes that the cases be transferred to the districts
26 as noted in the attached Amended Exhibit L. Plaintiffs' Lead Counsel do not oppose this
27 request. However, Plaintiffs' Lead Counsel have also been made aware that some individual
28

1 plaintiffs' counsel of record claim to have not known of these drafting errors and intend to
2 rectify the oversight.

3 **D. Amended Exhibits I, J, K – Cases where no federal jurisdiction exists,**
4 **duplicate filings, multiple cases filed by same plaintiff**

5 Defendants believe that the cases within Amended Exhibit I (those cases with no
6 federal jurisdiction), Amended Exhibit J (those cases that are still pending but are duplicate
7 filings by plaintiffs that have already settled, and Amended Exhibit K (those cases where a
8 plaintiff has multiple cases filed on the list of cases to be remanded or transferred) should
9 be dismissed.

10 Plaintiffs' Lead Counsel are not in a position to agree or disagree with Defendants
11 recommended action as relates to the issue of dismissals of cases in which other firms are
12 counsel of record for the plaintiff. This issue pertains to case specific matters and are the
13 sole responsibility of counsel of record in the related plaintiff's case.

14 In response to Lead Counsel's communications with all affected plaintiffs' counsel,
15 several issues were reported as to duplicate filings and dual representation, however, at the
16 time of this filing, Plaintiffs' Lead Counsel have followed up with counsel of record
17 responsible for these cases and believe the issues have been resolved. However, the
18 duplicative complaints filed by other firms may have not yet been dismissed. Lead Counsel
19 object to dismissals under these circumstances, since resolution has either occurred or can
20 be easily accomplished.

21 With regard to the Court's stated intention to dismiss cases where there is no federal
22 jurisdiction, Plaintiffs' Lead Counsel have been advised that many plaintiff's counsel have
23 indicated that their cases are in active, ongoing settlement discussions with Defendants.
24 Plaintiffs' Lead Counsel are not aware of any agreements where Bard seeks to settle an
25 unfiled or dismissed case with individual plaintiffs. Lead Counsel object to any such
26 dismissals without counsel of record being heard on behalf of their individual plaintiffs in
27 matters in which Bard is actively engaged in negotiating monetary resolution, and
28 simultaneously seeking dismissal without monetary compensation or settlement agreement.

E. Amended Exhibits

Since the January 2nd Joint Report, a number of cases have changed status. In some instances, the Plaintiffs have served the complaint since that date, and/or corrected deficiencies regarding the profile forms. In other cases, the Plaintiffs have filed a motion to amend the short form complaint to drop the non-diverse Defendant (which the Defendants will not oppose). In addition, in a small number of cases, the Plaintiffs' attorney has advised that a case previously identified as one to be remanded has in fact settled, or that a case previously identified as settled should in fact be remanded or transferred. The Defendants have therefore revised the exhibits to reflect those changes and have attached them to this filing.

Respectfully submitted, this 17th day of January, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2020 the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

/s/ Richard B. North